

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.**

J U D G M E N T

M/s. J.I.Harkin Crafts vs. Puranmal Modi & Anr.

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S.B. Civil First Appeal No.57/1988
under Section 96 read with Order 41 rule
1 C.P.C. against the judgment and decree
dated 21.01.1988 passed by Shri Dev
Chand Meena RHJS, Additional District
Judge No.4, Jaipur City, Jaipur in Civil
Suit No.45/84 decreeing the suit of the
plaintiff respondents.

Date of Judgment ::::: September 19, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mr.J.P.Goyal)
Mr.Amit Sharma) for appellant.
Mr.D.K.Soral for the respondents.

BY THE COURT (ORAL) :-

The facts in brief giving rise to this appeal are
that the plaintiff respondents filed a suit against the

defendant appellant for recovery of a sum of Rs.30,757/- alleging therein that the defendant used to take goods on credit and used to make the payment in different modes. The account of the amount was to be prepared at the end of each year and whatever amount found due used to be carried forward in the account of the defendant for the next year and interest @ 1% per month was to be charged. In paras 4 and 5 of the plaint, the plaintiffs mentioned the details of the goods supplied to the defendant. As per the case of the plaintiffs, in the year 1981-82 Rs.13,932/- were due towards defendant as they supplied goods to the extent of Rs.35,248/- out of which they received Rs.21,315.50 paisa. The plaintiffs came with the case that at the end of close of year 1983 i.e. on 31st March, 1983 an amount of Rs.20,737/- was due against the defendant which includes Rs.13,932/-. In such circumstances the plaintiffs filed a suit for recovery of Rs.30,757/- (Rs.20,737/- as principal sum and Rs.10,020/- interest).

In the written statement, the defendant has admitted the transaction between the parties but came with this case that no rate of interest was settled between the parties. The defendant also admitted the fact that the accounts sent by the plaintiffs were correct. However, the defendant objected demand of Rs.5,000/-. In the alternative, the defendant submitted that if any amount found due to him, he

is ready to pay the same in installments.

Learned trial court after framing issues, proceeded to record evidence of the parties. After recording evidence of the parties and hearing both the side, the learned trial court vide judgment dated 21st Jaunuary, 1988 decreed the suit of the plaintiffs for Rs.30,757.50 with interest of 12% from the date of judgment till realisation.

Heard learned counsel for the parties.

Learned counsel for the appellant has challenged the impugned judgment on two ground. The first ground is that the learned trial court has committed error in awarding interest @ 12% per annum on the due amount as no rate of interest was settled between the parties. The second ground of challenge is that the court at Jaipur had no jurisdiction to entertain and try the suit as no cause of action had arisen at Jaipur. As per learned counsel for the appellant all the transactions between the parties were at Delhi, the goods were supplied at Delhi and payment was also made at Delhi. Thus, the court at Jaipur had no jurisdiction to entertain and try the suit.

Learned counsel appearing for the plaintiff appellants on the other hand supporting the findings of the learned

trial court has contended that in the bills given to the defendant appellant there is clear mention regarding charging of 21% interest if the payment is not made within seven days. Counsel has contended that the witnesses of the plaintiffs have categorically deposed that interest @ 12% per annum was settled between the parties. Placing reliance on Section 61 (2) (a) of the Sale of Goods Act, 1930, learned counsel for the plaintiff-appellants contended that even if it is taken that there was no specific contract between the parties regarding payment of interest in view of the provisions of Section 61(2) (a) of the Sale of Goods Act, the court may award interest at such a rate as it thinks fit.

Regarding jurisdiction of court at Jaipur, learned counsel for the plaintiff-appellants contended that the witnesses of the plaintiffs have categorically denied the suggestion that the goods were supplied at Delhi. The witnesses have deposed that the defendants used to come to Jaipur and used to take the goods either by themselves or through truck. Counsel also contended that the payments were made at Jaipur. Therefore, the cause of action has arisen at Jaipur and court at Jaipur had jurisdiction to entertain and try the suit. On this strength, learned counsel for the plaintiff respondents submitted that no

interference is required to be called for in the impugned judgment and decree and the appeal is liable to be dismissed.

After hearing learned counsel for the parties, I have gone through the material and evidence available on record as well as the impugned judgment.

Sofar as point regarding awarding of interest @ 12% per annum is concerned, there is clear mention of charging 21% interest per annum in the bills in the event of non-payment of the bill amount. However, the learned trial court on evaluating the evidence of the plaintiffs has come to the conclusion that the plaintiffs have not been able to prove that there has been any contract between the parties regarding payment of interest on the due amount but the learned trial court exercising the discretion vested in it by virtue of provisions of Section 61(2) (a) of the above said Act, has granted interest @ 12% per annum, which cannot in any manner be said to excessive or illegal.

Sofar as the second point raised by learned counsel for the appellant regarding jurisdiction of the court at Jaipur to entertain and try the suit is concerned, suffice it to say that the learned trial court has committed no

error in deciding this point. PW.3 Om Prakash Modi in his statement has stated that Jasvinder Singh and his mother used to come to Jaipur for purchasing the cloth and the payment used to be made at Jaipur. He denied the suggestion that the plaintiffs used to go to Delhi with cloth. The witness further deposed that the defendants used to come with draft or cheque at Jaipur. Ex.P.4 is an admitted document which was sent by the defendant at Jaipur. This document is in connection of accounts between the parties. Ex.3 is the letter through which the demand drafts were sent to the plaintiffs. As per the evidence of the plaintiffs, the payment of the drafts sent through Ex.3 was made at Jaipur. In addition to it, the disputed cheque of Rs.5000/- was also payable at Jaipur. Thus, it is clear that part cause of action had also arisen at Jaipur and, therefore, court at Jaipur had jurisdiction to entertain and try the suit. In this view of the matter, I do not find any error in the finding recorded by the learned trial court on the issue regarding jurisdiction of court at Jaipur.

No other point was raised.

For the discussions above, the first appeal fails and is hereby dismissed with no orders as to cost.

(K.C.Sharma) , J.

Bairwa